

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ERIC PEAGLER, #7403-002

PETITIONER

VS.

CIVIL ACTION NO. 5:07-cv-166(DCB)(MTP)

CONSTANCE REESE, Warden

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 25**), and on the petitioner's objections thereto (**docket entry 27**). Being fully advised in the premises, the Court finds as follows:

On November 12, 2002, the petitioner, Eric Peagler, was sentenced in the United States District Court for the Middle District of Alabama to serve a term of 168 months on a conviction of Conspiracy to Distribute and Possess with the Intent to Distribute Cocaine, Cocaine Base and Marijuana, to run consecutively with the petitioner's state sentences.

On June 3, 2003, the petitioner was incorrectly designated and transferred to a federal correctional institution before he had completed service of his state sentences. After federal officials learned of the mistake, Peagler was transferred to state custody to serve his state sentences and a federal detainer was issued. On June 15, 2004, Peagler finished serving his state sentences and began serving his federal sentence. He is currently incarcerated at the Federal Correctional Complex in Yazoo City, Mississippi.

In his petition, Peagler alleges that he should "be given a nunc pro tunc designation allowing him to serve a portion of his federal sentence while he was previously in state custody," pursuant to 18 U.S.C. § 3621(b). He seeks a court order compelling the Bureau of Prisons (BOP) to consider him for nunc pro tunc designation to the custody of the State of Alabama for service of his federal sentence, so that he will receive credit against his federal sentence starting from the day it was imposed (November 12, 2002).

In a thorough and well reasoned Report and Recommendation, Magistrate Judge Parker states that a decision to designate a facility as a place of federal detention, pursuant to 18 U.S.C. § 3621(b), is "plainly and unmistakably within the BOP's discretion and we cannot lightly second guess a deliberate and informed determination by the agency charged with administering federal prison policy." (quoting Abdul-Malik v. Hawk-Sawyer, 403 F.3d 72, 75 (2nd Cir. 2005)). In this case, the BOP, after "full and fair consideration" to the petitioner's request, determined that Peagler's federal sentence was imposed to run consecutive to his state sentences and, therefore, a nunc pro tunc designation to permit his federal sentence to run concurrently with his Alabama sentence was not appropriate. This matter was within the BOP's discretion, and will not be disturbed by this Court. The petitioner's objections do not persuade the Court otherwise.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge Michael T. Parker (**docket entry 25**) is hereby adopted as the finding of this Court, and the petitioner's objections thereto (**docket entry 27**) are denied;

FURTHER ORDERED that the petitioner's petition is dismissed. A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure, dismissing this action with prejudice.

SO ORDERED, this the 2nd day of April, 2010.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE